IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

RCRev..No. 424 of 2006()

RCA.197/2005 of ADDL. DISTRICT COURT, VADAKARA
RCP.147/2004 of MUNSIFF COURT, VADAKARA
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: REVISION PETITIONERS/APPELLANTS/RESPONDENTS:

VARAPRATH ABBAS, AGED 52 YEARS,
S/O. MAHAMOOD, KUNHIPURAYIL HOUSE,
VATAKARA AMSOM AND DESOM, KOZHIKODE.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS: RESPONDENTS/PETITIONERS:

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1. PUTHIYA MADATHUMMAL PERINGADI RUKKHIYATH
AGED 58 YEARS, D/O.MAHAMOOD, PUTHIYA CHIRAKKAL
HOUSE, VATAKARA AMSOM, DESOM, (P.O) VATAKARA,
VATAKARA TALUK, KOZHIKODE DISTRICT.

2. PUTHIYA MADATHUMMAL PERINGADI,
MUHAMMED SAGIR, S/O.KUNHAMMAD, AGED 35 YEARS,
PUTHIYA CHIRAKKAL HOUSE, VATAKARA AMSOM, DESOM,
(P.O) VATAKARA, VATAKARA TALUK, KOZHIKODE DISTRICT

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. RAMACHANDRAN & A.K. BASHEER, JJ.

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R.C.R.NO.424 OF 2006

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DATED THIS THE 7TH DAY OF DECEMBER, 2006.

O R D E R

Basheer, J.

This revision petition filed under Section 20 of the Kerala Buildings (Lease and Rent Control) Act (for short 'the Act') is at the instance of the tenant of a commercial building. The authorities below have concurrently held that the petitioner is liable to be evicted under Section 11(4)(iii) of the Act.

2. Eviction was sought by the respondents contending inter-alia that the petitioner/tenant had kept the rent in arrears from January 2004 without any reasonable cause. It was further contended that respondent No.2, the son of the landlady (respondent No.1), was without any employment after his return from the Middle East. He wanted to start a grocery business in the petition schedule building. Since he had no building of his own, he was a dependant on his mother (the landlady) for the above purpose and therefore the building was needed for his bonafide onw occupation under Section 11(3) of the Act.

3. As regards the claim under Section 11(4)(iii) of the Act, it was contended by the landlady that the tenant was in possession of four other rooms which were reasonably sufficient for his business now being carried on in the petition schedule building. Respondents further prayed that the present rent of Rs.80/- per month being paid by the tenant, was too meagre and therefore, fair

rent had to be fixed under Section 5 of the Act. Thus, eviction was sought under Sections 11(2)(b), 11(3), 11(4)(iii) and Section 5(1) of the Act.

4. The claim for eviction was resisted by the petitioner/tenant contending that there was no bonafide at all in the claim for own occupation of the son of the landlady. The husband of the landlady is a wholesale merchant in rice, sugar, etc. Respondent No.2, her son, is helping him in the business. The contention that he intends to start a grocery business in the petition schedule building was only a ruse to evict the petitioner. He is sought to be evicted only because he had not agreed for enhancement of the rent. It was further contended that no other suitable buildings were in his possession to shift his business. The claim for fixation of fair rent was also resisted by the petitioner. As regards arrears of rent, it was contended that it had fallen in arrears since respondents had refused to accept the same.

5. The son of the landlady for whose own occupation eviction was sought, was examined as PW.1 before the Rent Control Court. Exts.A1 and A2 were also marked on the side of the landlady. Tenant was examined as RW.1 and Exts.B1 to B4 were marked on his side. The report and plan of the Advocate Commissioner were marked as Exts.C1 and C2.

6. On an elaborate consideration of the oral and documentary evidence on record, the Rent Control Court found that the landlady was entitled to get eviction under Sections 11(3) and 11(4)(iii) of the Act. The claim for eviction

under Section 11(2)(b) (arrears of rent) was turned down. Similarly, the prayer for fixation of fair rent was also disallowed.

7. The above order of eviction was challenged by the tenant before the Rent Control Appellate Authority. The appeal was allowed in part by the Appellate Authority and the order under Section 11(3) was set aside. However, it was held that the tenant was liable to be evicted under Section 11(4)(iii) of the Act. Hence this revision petition by the tenant.

8. Learned counsel for the petitioner was heard by us at length. We have been taken through the pleadings, documents and depositions of PW.1 and RW.1 extensively.

9. It is contended by the learned counsel that the authorities below were not justified in ordering eviction under Section 11(4)(iii) of the Act since there were material contradictions in the pleadings and oral testimony of PW.1 as regards the availability of other buildings in the possession of the petitioner. In the eviction petition it was specifically averred that the tenant was in actual possession of four other rooms. It was further averred that the tenant had let out certain other buildings belonging to him on rent. But it is pointed out by the learned counsel that in chief examination PW.1, the son of the landlady, had deposed that the tenant was having only three other rooms apart from the petition schedule building.

10. The number of the petition schedule building is stated to be 8/304.

PW.1 asserted that room No.8/305 was being used by the tenant for the purpose of conducting a ration shop, while room No.8/306 was being used as an STD booth. Though room No.8/307 was let out on rent for bag manufacturing business, the tenant had got vacant possession of the same recently. Building No.8/308 is also in the possession of the tenant which is kept vacant. However, it was contended by the tenant that he had been using room Nos.8/304 and 8/305 as ration shop. His daughter was conducting an STD booth in room No.8/306 while his son-in-law was running the bag manufacturing unit in building No.8/307.

11. In this context, it may be pertinent to note that petitioner had not produced any document to show that room No.8/307 was in the occupation of his son-in-law. It is true that in respect of building No.8/306, petitioner had produced Ext.B2 which is stated to be an agreement executed between the BSNL and his daughter. In Ext.C1 report filed by the Advocate Commissioner he had stated that 8 bags of wheat and 2 barrels of kerosene were found in the petition schedule building (8/304). However, he had specifically reported that petitioner had been conducting the ration shop in room No.8/305. Almost all the ration articles were found in the said room. In fact, the respondents had stated before the Advocate Commissioner that the tenant had shifted some of the ration articles to the petition schedule building (8/304) after getting notice of inspection of the Advocate Commissioner. In fact, the respondent/landlady has a specific case that the Rationing licence had been obtained by the tenant in respect of building No.8/305.

Though the petitioner had offered to produce the licence before the court, he did not do so. Any how, the Commissioner found that the petitioner was conducting the ration shop in building No.8/305.

12. It is pertinent to note that petitioner had not filed his objection to the Commission report, nor had he examined the Advocate Commissioner. The Commissioner had categorically stated that Room Nos.8/305 to 8/308 were in the possession of the tenant in addition to the petition schedule building. The authorities below had adverted to the above aspect and held that the tenant had failed to discharge his burden to show that the other buildings were not reasonably sufficient for his requirement. The Commissioner had also noted that petitioner himself was conducting the STD booth in building No.8/306 and building No.8/307 was also in his possession. Building No.8/308 lay vacant.

13. As mentioned earlier, the Advocate Commissioner was not examined by the petitioner in order to discredit the veracity of the assertions made by him in his report. It is true that the probative value of the report of the Commissioner is limited. But still, in the peculiar facts and circumstances of this case, particularly for the reason that the petitioner had not filed any objection to the report of the Commissioner, we are satisfied that the same can be relied on for the limited purpose of finding whether the petitioner was in actual possession of the four rooms adjoining the petition schedule building.

14. As mentioned earlier, petitioner had not produced any document to

show that building No.8/307 was in occupation of his son-in-law. That being the position, it has to be held that the petitioner had failed to discharge the burden cast upon him. It is trite that the burden is on the tenant to prove that the other buildings in his occupation are not sufficient for his purpose. The primafacie burden having been discharged by the landlady, it necessarily follows that the claim for eviction under Section 11(4)(iii) is liable to be allowed.

15. We have carefully perused the orders passed by the two authorities below. We are satisfied that the concurrent finding entered by the two fact finding authorities was eminently justified in the facts and circumstances of the case. No material illegality or irregularity has been pointed out. Even assuming that the petitioner's daughter is running the STD booth, petitioner has not been able to establish that building No.8/305 is not sufficient for the purpose of his ration business. He has also failed to discharge the burden that he is not in actual occupation of building Nos.8/307 and 8/308, though he has vaguely contended that his son-in-law is in occupation of the former of the two rooms. No document to prove that his son-in-law is conducting a business in the said building, has been produced.

16. Learned counsel has invited our attention to two decisions of this court in support of his case. In **Abdul Rahiman v. Lakshmi** (1994 (2) KLT 123) this court has held that "in a claim under Section 11(4)(iii), the landlord need not prove that he has a bonafide need for own occupation in addition to the conditions

contained under sub-clause (iii). We find it difficult to understand as to how this decision will come to the aid of the petitioner.

17. The other decision relied on by the petitioner is **Kunhiraman v. Kumaran** (2004 (2) KLT 674). This court held that the burden is on the landlord to primafacie show that the building acquired by the tenant is reasonably sufficient for his requirement. In this case the primafacie burden had been discharged by the landlady. Having gone through the above judgment, we are unable to see any proposition of law which would support the case of the petitioner.

18. Having regard to the entire facts and circumstances and having considered the materials on record, we do not find any reason to interfere with the concurrent finding entered by the authorities below. There is no merit in the revision petition and it is liable to be dismissed.

At this stage, learned counsel for the petitioner submits that the petitioner/tenant may be granted some reasonable time to vacate the premises. In the peculiar facts and circumstances, we are satisfied that the said request is only just and reasonable.

Therefore, this revision petition is disposed of with a direction that the execution of the order of eviction shall be kept in abeyance for a period of three months from today, on condition that the petitioner files an affidavit before the Rent Control Court undertaking to give vacant possession of the building on or

before March 10, 2007. He shall also pay the entire arrears of rent and continue to pay future rent also till he vacates the building. The affidavit shall be filed within two weeks from the date of receipt of a copy of this order.

(M.Ramachandran, Judge.)

(A.K. Basheer, Judge.)

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